IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 918 of 1990
For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL NAGINDAS

Versus

KHUSHARU PIROJSHA ILAVIYA

Appearance: MR NM KAPADIA for the Petitioner.
MRS KETTY A MEHTA for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/04/2004

ORAL JUDGEMENT

This is a revision application filed by the plaintiff of a suit, being Rent Suit No.9 of 1988. The aforesaid suit is filed by the plaintiff for getting a decree for possession of the rented premises on the ground of personal bona fide requirement as well as on the ground of arrears of rent as well as on the ground of non-user of the suit premises on the part of the tenant.

The plaintiff is the owner of the property, bearing Ward No.11, Nondh No.1705, situated in Chauta Bazaar, Machhalipith area of the City of Surat. Out of the said property, one shop on the ground floor is let out to the defendant on the monthly rent of Rs.40/-. The

case of the plaintiff is that his two sons are yet to be married and the plaintiff is not in a position to accommodate all the family members in the premises, which is in his possession. It is also the case of the plaintiff that his one son is a Lawyer and the other son is a Chartered Accountant and for the purpose of profession of his sons, he requires the suit premises. It is also the case of the plaintiff that the defendant is not using the suit premises since last six months prior to the filing of the suit. It is also the case of the plaintiff that the defendant is in arrears of rent of Rs.200/-.

The said suit of the plaintiff was resisted by the defendant by filing written statement Exhibit 13. The defendant has prayed that the standard rent of the premises should be fixed. It is contended by the defendant that the rented shop is a very small one, admeasuring 10 ft. x 12 ft. and that the case of the plaintiff about bona fide requirement is not genuine.

The learned trial Judge, after raising necessary issues at Exhibit 14, and after considering the evidence on record, came to the conclusion that the tenant is ready and willing to pay the rent. The trial court came to the conclusion that the plaintiff has proved his case about bona fide requirement.

The learned trial Judge also found that the tenant has not used the suit premises within the last six months of filing of the suit. The trial court accordingly decreed the said suit of on the aforesaid ground, i.e. bona fide requirement of the plaintiff, as well as on the ground of non-user of the suit premises on the part of the defendant.

Against the aforesaid decree of the trial court, the respondent-original defendant preferred an appeal before the appellate court, being Regular Civil Appeal No.155 of 1984. The learned appellate Judge came to the conclusion that the plaintiff has failed to prove his case about bona fide requirements. The appellate court also found that the defendant is using the suit premises and that the plaintiff has failed to prove his case about the non-user of the suit premises on the part of the defendant at any point of time. The appellate court, therefore, allowed the said appeal, by setting aside the decree for possession passed by the trial court. It is the aforesaid order of the appellate court, which is impugned at the instance of the original plaintiff in this revision application, which is filed under Section

29(2) of the Rent Act.

So far as the question about bona fide requirement is concerned, the appellate court has dealt with the said point in paragraphs 9 and 10 of the judgment. Paragraphs 9 and 10 of the judgment of the appellate court read as under :-

" ... ...

9. It is also argued by the learned Advocate Shri G.U. Patel on behalf of the defendant that there is a gallery on the first floor, which is 25 feet long and 4 feet in width. So, by constructing a partition on the corner of this gallery, they can have a small cabin to start office of a lawyer or for an office of a Chartered Accountant. It is not understood that why the plaintiff has selected only this defendant who is conducting a small bakery and confectionery business in the suit shop. It is also an admitted position that the plaintiff has got a rented shop in Khand Bazar, Surat where the plaintiff himself is sitting and doing his business in this Khand Bazar Shop. It is also alleged by the defendant of this case that the plaintiff has got another property in Nanavat. It is a rented property where he is having a factory of power-looms. This property that there is an extensive property and sufficient space with the plaintiff to accommodate all his sons.

10. I agree with the arguments of Advocate Shri G.U. Patel, on behalf of the appellant that even though the Court below has believed personal bona fide requirement of the plaintiff, then also it was the duty of the Court to discuss the evidence, to appreciate the evidence and to come to its independent finding. If we go to read the Judgment of the learned Small Cause Judge, Issue No.7 is to this effect : "If so, to whom greater hardship would be caused in the event of passing or refusing to pass a decree of eviction." The learned trial Judge, as it seems, has not given any finding on this issue, but he has simply written "as discussed", but this is not sufficient. A clear finding is required to be given whether the plaintiff will suffer hardship by not passing a decree of whether the defendant will suffer greater hardship by passing a decree of eviction. This issue is only discussed and not decided properly by the learned Small Cause Judge, on the ground stated above that the

> plaintiff may have got a very big family, his sons may be grown up sons, but defendant who is a poor man and a small shop-keeper, who is running his business in this suit shop since 1970 will definitely suffer greater hardship as he has no other place to start his business. It is also an admitted position that the defendant is not residing here, but he is residing at Gopipura and comes here and attends his shop for his business. Therefore, taking into account the comparative hardship and the space available to the plaintiff on the first and second floor of the suit property and the fact that the has also got possession of the property No.17/5 to 17/6 after filing the suit, then it cannot be said that the plaintiff will suffer greater hardship because he can accommodate his sons. Of course for some inconvenience there are Rulings of our own Gujarat High Court on the point that mere intention or mere imaginary need of the plaintiff will not be sufficient. It will be necessary for the plaintiff to prove absolute necessity in a case. Applying this test to our case, the plaintiff is not in sheer necessity meaning thereby, that he cannot start any business or he cannot do any work without obtaining possession of this property, which is not the case here. On the other hand greater hardship will be caused to the defendant, who is having no other property to do his business.
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> ... ..."

It has been observed by the appellate court that, it is an admitted position that the plaintiff has got a rented shop in Khand Bazaar, Surat, where the plaintiff himself is sitting and doing the business. It has been found that the plaintiff has another property in Nanavat area, which is also a rented property, in which the plaintiff is having a factory of power looms. It has been found that the area is of great extent and sufficient space is also there. It has come on record that the defendant is having a confectionery and bakery business in a small scale in the area of 10 ft. x 12 ft. The appellate Judge has also observed in paragraph 8 of the judgment that after filing the suit, the plaintiff has got possession of other properties, bearing Nos. 17/1 to 17/4 as well as 17/5 and 17/6, which were leased out to other persons.

Considering the evidence on record, therefore, the appellate Judge found that the plaintiff has failed

to prove his case about bona fide requirement. The appellate court has also found that the defendant is a poor man, having a small shop and he is running his business since 1970. It is found that if the decree for possession is passed, he will suffer greater hardship. Considering the aforesaid aspect of the matter, the appellate court has set aside the order of the trial court so far as it relates to passing of the decree on the ground of bona fide requirement is concerned.

So far as non-user aspect is concerned, the appellate Judge has found that the defendant is running his business of bakery for about 10 to 15 days every month. In the concluding part of paragraph 12 of the judgment, the learned appellate Judge has considered the say of the plaintiff to the effect that the defendant is not keeping his shop open for the entire month, but the shop remains closed for 10 to 15 days a month.

The appellate Judge is perfectly justified in coming to the conclusion that, if that be so, it cannot be said that there is non-user, as provided by Section 13(1)(k) of the Rent Act. As per the said provision, the property must be kept under lock for a continuous period of six months prior to the filing of the suit.

Considering the reasoning of the appellate court, which is based on the evidence on record, in my view, it cannot be said that the appellate court has committed any error of law in passing the impugned order. The appellate Judge has elaborately dealt with the case of the plaintiff regarding his demand for getting possession of the suit premises on the ground of bona fide requirement. It has been found that the plaintiff has failed to prove his case about bona fide requirement. Even the property, which the plaintiff has acquired subsequently, has also been taken into consideration. The appellate Judge has also considered the financial position of the defendant and has rightly come to the conclusion that even if the decree is passed on the ground of bona fide requirement, it would cause more hardship to the defendant, than to the plaintiff.

On the ground of non-user also, it cannot be said that the appellate court has committed any error, as, it has been proved that the defendant is keeping the shop open and even if it is closed for a few days in a month, it cannot attract the provisions of Section 13(1)(k) of the Rent Act, as, it cannot be said that the shop has been kept closed for more than six months. Under the circumstances, the order of the appellate court is not required to be interfered with by this Court in this

revision application. I, therefore, do not find any substance in this revision. The revision is accordingly dismissed. Rule is discharged, with no order as to costs.

23rd April, 2004 (P.B. Majmudar, J.)

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(apj)